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# SENATE BILL No. 124

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 5-14-1.5-2; IC 36-8-2-14; IC 36-11.

**Synopsis:** Collective bargaining for public safety employees. Allows the police officers and firefighters of a unit (a county, city, town, or township) to bargain collectively with an employer through an exclusive representative. Requires the education employment relations board to implement the collective bargaining law. Specifies the rights and duties of employees and employers in collective bargaining. Provides for the recognition of exclusive representatives, payroll deductions, complaint proceedings before the board, judicial review of complaints, mediation, and arbitration. Provides that a term of an arbitration panel's decision becomes part of the unit's collective bargaining agreement unless it is rejected by 60% of the members of the unit's legislative body within 20 days after the decision is issued. Prohibits lockouts and strikes. Provides that an agent appointed by a unit to conduct collective bargaining for the unit is not a "governing body" for open door law purposes.

**Effective:** July 1, 2002.

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December 7, 2001, read first time and referred to Committee on Pensions and Labor.

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Second Regular Session 112th General Assembly (2002)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2001 General Assembly.

## SENATE BILL No. 124

A BILL FOR AN ACT to amend the Indiana Code concerning labor.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 5-14-1.5-2 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 2. For the purposes of  
3 this chapter:

4 (a) "Public agency" means the following:

5 (1) Any board, commission, department, agency, authority, or  
6 other entity, by whatever name designated, exercising a portion of  
7 the executive, administrative, or legislative power of the state.

8 (2) Any county, township, school corporation, city, town, political  
9 subdivision, or other entity, by whatever name designated,  
10 exercising in a limited geographical area the executive,  
11 administrative, or legislative power of the state or a delegated  
12 local governmental power.

13 (3) Any entity which is subject to either:

14 (A) budget review by either the state board of tax  
15 commissioners or the governing body of a county, city, town,  
16 township, or school corporation; or

17 (B) audit by the state board of accounts.

18 (4) Any building corporation of a political subdivision of the state



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of Indiana that issues bonds for the purpose of constructing public facilities.

(5) Any advisory commission, committee, or body created by statute, ordinance, or executive order to advise the governing body of a public agency, except medical staffs or the committees of any such staff.

(6) The Indiana gaming commission established by IC 4-33, including any department, division, or office of the commission.

(7) The Indiana horse racing commission established by IC 4-31, including any department, division, or office of the commission.

(b) "Governing body" means two (2) or more individuals who are:

(1) a public agency that:

(A) is a board, a commission, an authority, a council, a committee, a body, or other entity; and

(B) takes official action on public business;

(2) the board, commission, council, or other body of a public agency which takes official action upon public business; or

(3) any committee appointed directly by the governing body or its presiding officer to which authority to take official action upon public business has been delegated.

An agent or agents appointed by a school corporation **or a unit** to conduct collective bargaining on behalf of that school corporation **or unit** does not constitute a governing body for purposes of this chapter.

(c) "Meeting" means a gathering of a majority of the governing body of a public agency for the purpose of taking official action upon public business. It does not include:

(1) any social or chance gathering not intended to avoid this chapter;

(2) any on-site inspection of any project or program;

(3) traveling to and attending meetings of organizations devoted to betterment of government; or

(4) a caucus.

(d) "Official action" means to:

(1) receive information;

(2) deliberate;

(3) make recommendations;

(4) establish policy;

(5) make decisions; or

(6) take final action.

(e) "Public business" means any function upon which the public agency is empowered or authorized to take official action.

(f) "Executive session" means a meeting from which the public is

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excluded, except the governing body may admit those persons necessary to carry out its purpose.

(g) "Final action" means a vote by the governing body on any motion, proposal, resolution, rule, regulation, ordinance, or order.

(h) "Caucus" means a gathering of members of a political party or coalition which is held for purposes of planning political strategy and holding discussions designed to prepare the members for taking official action.

(i) "Deliberate" means a discussion which may reasonably be expected to result in official action (defined under subsection (d)(3), (d)(4), (d)(5), or (d)(6)).

(j) "News media" means all newspapers qualified to receive legal advertisements under IC 5-3-1, all news services (as defined in IC 34-6-2-87), and all licensed commercial or public radio or television stations.

(k) "Person" means an individual, a corporation, a limited liability company, a partnership, an unincorporated association, or a governmental entity.

SECTION 2. IC 36-8-2-14 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: **Sec. 14. Collective bargaining for public safety employees is governed by IC 36-11.**

SECTION 3. IC 36-11 IS ADDED TO THE INDIANA CODE AS A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]:

# **ARTICLE 11. COLLECTIVE BARGAINING FOR PUBLIC SAFETY EMPLOYEES**

## **Chapter 1. Collective Bargaining for Public Safety Employees: Definitions**

**Sec. 1. The definitions in this chapter apply throughout this article.**

**Sec. 2. "Bargain collectively" means to perform the obligation of an employer (through the employer's executive or the executive's designee) and of the designee of the exclusive representative to do the following:**

**(1) Meet at reasonable times, including meetings in advance of the budget making process.**

**(2) Negotiate in good faith concerning the following:**

**(A) Wages.**

**(B) Salaries.**

**(C) Hours.**

**(D) Salary and wage related benefits.**



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1 (E) All other terms and conditions of employment,  
2 including health and safety conditions.

3 (3) Execute a written contract incorporating an agreement if  
4 a written contract is requested by either party.

5 Sec. 3. "Bargaining unit" means the full-time employees of a  
6 police or fire department. The term does not include a person in an  
7 upper level policy making position (as defined in IC 36-8-1-12),  
8 except a person in an upper level policy making position included  
9 in an agreement in effect on July 1, 2002.

10 Sec. 4. "Board" refers to the Indiana education employment  
11 relations board created by IC 20-7.5-1-9.

12 Sec. 5. "Complainant" means an employer, employee, employee  
13 organization, or exclusive representative that files a complaint with  
14 the board under IC 36-11-3.

15 Sec. 6. "Employee" means a person who is a member of a  
16 bargaining unit.

17 Sec. 7. "Employee organization" means an organization in  
18 which employees participate and that exists to deal with an  
19 employer concerning any of the following:

- 20 (1) Grievances.
- 21 (2) Labor disputes.
- 22 (3) Wages.
- 23 (4) Rates of pay.
- 24 (5) Hours of employment.
- 25 (6) Employment conditions.

26 Sec. 8. "Employer" means either of the following:

- 27 (1) A unit to which this article applies.
- 28 (2) A person designated by the unit to act in the unit's  
29 interests in dealing with employees.

30 Sec. 9. "Exclusive representative" means an employee  
31 organization that is:

- 32 (1) certified under IC 36-11-2 by the board; or
- 33 (2) recognized by the employer as the exclusive representative  
34 of the employees in a bargaining unit.

35 Sec. 10. "Respondent" means a person against whom a  
36 complainant files a complaint under IC 36-11-3.

37 Sec. 11. "Strike" includes concerted:

- 38 (1) willful absence from the employee's position;
- 39 (2) stoppage of work; or
- 40 (3) abstinence in whole or in part from the full and proper  
41 performance of the duties of employment.

42 Chapter 2. Collective Bargaining for Public Safety Employees:

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**Employee Organizations**

**Sec. 1. This chapter applies to all units.**

**Sec. 2. The board shall implement and administer this chapter and IC 36-11-3 through IC 36-11-5. To do so, the board may exercise the powers granted to the board under IC 20-7.5-1-9.**

**Sec. 3. Employees may do the following:**

- (1) Form, join, or participate in employee organizations.**
- (2) Participate in collective bargaining with the employer through representatives of the employees' choosing.**
- (3) Engage in other activities, individually or in concert, to establish, maintain, or improve the following:**

**(A) Salaries.**

**(B) Wages.**

**(C) Hours.**

**(D) Salary and wage related fringe benefits.**

**(E) All other terms and conditions of employment, including health and safety conditions.**

**Sec. 4. An employer shall manage and direct the employer's operations and activities to the full extent authorized by law.**

**Sec. 5. An employer may do the following:**

- (1) Direct the work of an employee, except where otherwise provided by law.**
- (2) Establish policy.**
- (3) Hire, promote, demote, transfer, assign, and retain an employee in accordance with law and collective bargaining agreements.**
- (4) Suspend or discharge an employee in accordance with law.**
- (5) Maintain the efficiency of governmental operations.**
- (6) Take action necessary to carry out the missions of the police department and the fire department.**
- (7) Protect the fiscal soundness and assure the continuation of vital public safety services.**
- (8) Take actions necessary to carry out the employer's responsibilities in emergencies, including any of the following:**
  - (A) Riot.**
  - (B) Military action.**
  - (C) Natural disaster.**
  - (D) Civil disorder.**

**Sec. 6. In accordance with rules adopted by the board under IC 4-22-2, the board shall investigate a petition filed with the board by:**

- (1) an employee organization alleging that thirty percent**



(30%) of the employees in the appropriate bargaining unit wish to be represented for collective bargaining purposes by an exclusive representative;

(2) an employer alleging that at least one (1) employee organization has presented a claim to be recognized as the exclusive representative in an appropriate bargaining unit; or

(3) an employee or a group of employees alleging that thirty percent (30%) of the employees assert that the designated exclusive representative is no longer the representative of the majority of employees in the bargaining unit.

Sec. 7. If the board has reasonable cause to believe that a question of representation exists, the board shall conduct a hearing within thirty (30) days after a petition is filed with the board. If the board finds upon the record of the hearing that a question of representation exists, the board shall do the following:

(1) Direct an election by secret ballot within thirty (30) days after the hearing.

(2) Certify the results within ten (10) days after the election.

Sec. 8. If the parties referred to in section 6 of this chapter waive the hearing, the board is not required to conduct a hearing under section 7 of this chapter before a consent election.

Sec. 9. The board shall determine who is eligible to vote in an election directed under section 7 of this chapter and shall establish rules governing the election, subject to the following conditions:

(1) To be placed on the ballot, an employee organization must be designated by more than ten percent (10%) of the employees in the unit.

(2) If none of the choices on the ballot receives a majority in an election but a majority of all votes cast are for representation by some employee organization, the board shall conduct a runoff election.

(3) An employee organization that receives the majority of the votes cast in an election shall be certified by the board as the exclusive representative.

Sec. 10. An election may not be directed in a bargaining unit or in a subdivision of a bargaining unit within which a valid election has been held in the preceding twelve (12) months.

Sec. 11. Notwithstanding sections 6 through 10 of this chapter, an employer shall recognize a particular employee organization as the exclusive representative of the employees within an appropriate bargaining unit if the employee organization presents to the employer evidence that the employee organization represents a

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majority of the employees within the bargaining unit, unless an employee organization or a group of employees representing employees within the bargaining unit files a written objection to recognition with the employer or the board.

**Sec. 12. If:**

(1) an employee organization, under section 11 of this chapter, provides an employer with evidence that the employee organization represents a majority of the employees within an appropriate bargaining unit; and

(2) no written objection to the recognition of the employee organization as the exclusive representative of the employees within the bargaining unit is filed under section 11 of this chapter by another employee organization or a group of employees representing the employees within the bargaining unit;

the board is not required to hold a hearing or to direct an election on the question of whether the employee organization referred to in subdivision (1) shall be recognized as the exclusive representative of the employees within the bargaining unit.

**Sec. 13.** Before recognizing an employee organization as an exclusive representative under section 11 of this chapter, the employer must post a written public notice of the employer's intention to recognize the employee organization as the exclusive representative of the employees within the bargaining unit. The notice must be posted in a place where it will be seen by the employees within the bargaining unit for at least thirty (30) days immediately preceding the recognition.

**Sec. 14. In a case in which:**

(1) there is a historical pattern of recognition; and

(2) the employer has recognized an employee organization as the sole and exclusive bargaining agent for an existing bargaining unit;

the board shall find that the employees in the bargaining unit are represented by that employee organization and recognize the employee organization as the exclusive representative.

**Sec. 15.** A determination made under this chapter that an employee organization has been chosen as the exclusive representative by a majority of the employees in an appropriate bargaining unit is subject to judicial review under the same procedure, time limits, and other requirements as are set forth in IC 36-11-3-13 though IC 36-11-3-23 for review of an order of the board. The record of the board's determination of the appropriate

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bargaining unit and the exclusive representative may be a part of the transcript of a proceeding under this section.

**Sec. 16.** An employer, upon receipt of a written authorization from an employee subject to this chapter, shall:

(1) deduct from the pay of the employee the dues, fees, or assessments designated or certified by the appropriate officer of an employee organization; and

(2) remit those amounts to the employee organization.

**Sec. 17.** A collective bargaining agreement with an employee organization that is recognized as an exclusive representative under this chapter may include a provision requiring an employee who is covered by the collective bargaining agreement but is not a member of the employee organization to pay a proportionate share of the costs of the collective bargaining process, contract administration, and matters affecting wages, hours, and conditions of employment. This proportionate share may not exceed the amount of dues uniformly required of members of the employee organization.

**Sec. 18.** An employee organization referred to in section 17 of this chapter shall certify to an employer the amount constituting each nonmember employee's proportionate share. The employer shall deduct the proportionate share payment from the earnings of a nonmember employee and pay the amount to the employee organization.

**Sec. 19.** Only the exclusive representative of the employees within a bargaining unit may negotiate provisions in a collective bargaining agreement providing for the payroll deduction of any of the following:

- (1) Labor organization dues.
- (2) Fair share payment.
- (3) Initiation fees.
- (4) Assessments.

**Sec. 20.** Except as provided in sections 17 and 18 of this chapter, deductions may be made only upon an employee's written authorization and shall be continued until:

- (1) revoked in writing; or
- (2) the termination date of the applicable collective bargaining agreement.

**Sec. 21.** A collective bargaining agreement providing for an employee who is not a member of the employee organization recognized as the exclusive representative to pay a proportionate share agreement must safeguard the right of nonassociation based



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upon bona fide religious tenets of an employee. An affected employee may be required to pay an amount equal to the employee's proportionate share, determined under a lawful proportionate share agreement, to a nonreligious charitable organization agreed upon by the employee and the exclusive representative to which the employee would otherwise pay the service fee.

**Sec. 22.** If an affected employee referred to in section 21 of this chapter and the exclusive representative are unable to agree on a payment under section 21 of this chapter, the board may establish an approved list of charitable organizations to which the payments may be made.

**Sec. 23.** It is an unfair labor practice for an employer to do any of the following:

- (1) Interfere with, restrain, or coerce an employee in the exercise of the rights guaranteed in this chapter or IC 36-11-3 through IC 36-11-5.
- (2) Dominate, interfere, or assist in the formation or administration of an employee organization, or contribute financial or other support to an employee organization.
- (3) Discriminate in regard to:
  - (A) hiring practices;
  - (B) tenure of employment; or
  - (C) a term or condition of employment;
 to encourage or discourage membership in an employee organization.
- (4) Discharge or otherwise discriminate against an employee because that employee has:
  - (A) filed a complaint, an affidavit, or a petition; or
  - (B) given information or testimony under this chapter or IC 36-11-3.
- (5) Refuse to bargain collectively in good faith with an exclusive representative concerning the following:
  - (A) Wages.
  - (B) Rates of pay.
  - (C) Hours.
  - (D) Working conditions.
  - (E) Any other terms or conditions of employment.
- (6) Fail or refuse to comply with this chapter or IC 36-11-3 through IC 36-11-5.

**Sec. 24.** It is an unfair labor practice for an employee organization to do any of the following:

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**(1) Interfere with, restrain, or coerce:**

**(A) an employee in the exercise of the rights guaranteed in this chapter or IC 36-11-3 through IC 36-11-5; or**

**(B) an employer in the selection of an exclusive representative for collective bargaining or the adjustment of grievances.**

**(2) Cause or attempt to cause an employer to discriminate against an employee contrary to section 23 of this chapter.**

**(3) Refuse to bargain collectively in good faith with an employer if the employee organization is the exclusive representative.**

**(4) Engage in a strike.**

**(5) Fail to comply with this chapter or IC 36-11-3 through IC 36-11-5.**

**Sec. 25. It is not an unfair labor practice for an employer to confer with an employee without loss of time or pay by the employee during working hours.**

**Sec. 26. It is not an unfair labor practice for an employee organization to adopt rules concerning the acquisition or retention of membership in the employee organization.**

**Chapter 3. Collective Bargaining for Public Safety Employees: Complaints**

**Sec. 1. This chapter applies to all units.**

**Sec. 2. (a) An employer, employee, employee organization, or exclusive representative who is aggrieved by an alleged unfair labor practice may file a complaint with the board.**

**(b) The board shall serve a copy of the complaint on the respondent complained of and notify the respondent of the date and place of a hearing on the complaint.**

**Sec. 3. (a) The board shall hold a hearing on a complaint not less than five (5) days or more than thirty (30) days after the complaint is served on the respondent.**

**(b) A notice of a hearing may not be issued based upon an alleged unfair labor practice occurring more than ninety (90) days before the filing of the complaint, unless the complainant was prevented from filing the complaint because of service in the armed forces. In that event, the complaint must be filed not more than ninety (90) days after the complainant's discharge from the armed forces.**

**Sec. 4. (a) A complaint may be amended by the complainant at any time before the issuance of an order by the board if the respondent would not be unfairly prejudiced by the amendment.**

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(b) The respondent shall file an answer to the original or amended complaint. The complainant and the respondent are parties and are entitled to appear in person or otherwise give testimony at the hearing. At the discretion of the board, an interested person may be allowed to intervene in the hearing and present testimony.

Sec. 5. The board is not bound by the rules of evidence in conducting a hearing under this chapter. Testimony received at a hearing shall be reduced to writing and filed with the board. After receiving the testimony, the board may take further testimony or hear arguments upon notice to the parties.

Sec. 6. (a) In a proceeding on a complaint under this chapter, the board shall make a determination based on the preponderance of evidence received.

(b) If the board determines that the respondent was or is engaged in an unfair labor practice, the board shall state the findings of fact and serve on the respondent an order requiring that the respondent cease the unfair labor practice and take affirmative actions, including reinstatement of an employee with or without back pay, to carry out this chapter, IC 36-11-2, IC 36-11-4, or IC 36-11-5. The order may further require that the respondent make reports showing the extent of the respondent's compliance with the order.

Sec. 7. If the board determines that a respondent:

- (1) did not engage in; or
- (2) is not engaging in;

an unfair labor practice, the board shall state the findings of fact and dismiss the complaint.

Sec. 8. A hearing may be conducted by:

- (1) a member of the board; or
- (2) a hearing examiner or an agency designated by the board;

instead of by the full board. However, after the hearing, the member, hearing examiner, or agency shall serve on the parties and file with the board proposed findings and a recommended order.

Sec. 9. If an exception is not filed by a party:

- (1) within twenty (20) days after service on the parties; or
- (2) within a period authorized by the board;

the recommended order filed under section 8 of this chapter becomes the order of the board.

Sec. 10. If an exception to a recommended order filed under section 8 of this chapter is filed, the board shall grant review if the

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board determines that the exception raises a substantial issue of fact or law.

Sec. 11. If the board determines that an exception to a recommended order filed under section 8 of this chapter does not raise a substantial issue of fact or law, the recommended order becomes the order of the board.

Sec. 12. An order of the board under sections 8 through 11 of this chapter is a final order and binding on the parties to the complaint, subject to judicial review under sections 13 through 23 of this chapter.

Sec. 13. Not later than thirty (30) days after service of the board's order on the complainant and respondent under:

(1) IC 36-11-2-6 through IC 36-11-2-15; or

(2) sections 1 through 11 of this chapter;

the board or the complainant may petition the circuit or superior court of a county in which the unit is located for the enforcement of the board's order and for appropriate relief.

Sec. 14. A party aggrieved by the board's order may petition the court for a review of the order and for appropriate relief. If a petition is not filed within the thirty (30) day period allowed by section 13 of this chapter, the order may not be reviewed. The board shall then file a petition with the court to enforce the order.

Sec. 15. The commencement of proceedings after the filing of a petition under section 14 of this chapter does not, unless specifically ordered by the court, operate as a stay of the board's order.

Sec. 16. After a petition is filed under section 14 of this chapter, the court shall have notice of the petition served upon the parties and send a copy to the board.

Sec. 17. In a proceeding on a petition filed under section 14 of this chapter, an objection that was not made at the hearing conducted under section 8 of this chapter may not be considered by the court, unless the failure to make the objection is excused because of extraordinary circumstances.

Sec. 18. If either party to a petition filed under section 14 of this chapter applies to the court for leave to introduce additional evidence and shows to the satisfaction of the court that:

(1) the additional evidence is material; and

(2) there were reasonable grounds for the failure to introduce the evidence in the hearing conducted under section 8 of this chapter;

the court may order the additional evidence to be taken by the

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board and made a part of the record.

Sec. 19. After a court, under section 18 of this chapter, orders the board to make additional evidence a part of the record, the board:

(1) may modify the findings of fact by reason of the additional evidence; and

(2) shall file any modified findings and any recommendations for a modification or setting aside of the original order with the court.

Sec. 20. A party who petitions a court for review of an order of the board under section 14 of this chapter must file a record of the hearing, certified by the board, with the court. Until a record of the hearing is filed, the board may, at any time upon reasonable notice, modify or set aside all or part of a finding or an order made or issued by the board.

Sec. 21. After the record of a hearing conducted under section 8 of this chapter is filed with the court under section 20 of this chapter, the jurisdiction of the court to modify, set aside, or enforce a board's order and to grant other appropriate relief is exclusive, and the court's judgment and decree are final, subject to review in accordance with the rules of court.

Sec. 22. Petitions filed under section 13 of this chapter shall be heard not later than sixty (60) days after the petitions are docketed. The petition takes precedence over all other civil matters except matters of the same character docketed earlier.

Sec. 23. In a court's review of an order of the board under this chapter, the original or modified findings of fact by the board with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, are conclusive.

#### Chapter 4. Collective Bargaining for Public Safety Employees: Mediation and Arbitration

Sec. 1. This chapter applies to all units.

Sec. 2. Employers and employees shall bargain collectively. The parties shall enter into a contract embodying the matters on which the parties have agreed during the collective bargaining process.

Sec. 3. A contract may not include provisions in conflict with any of the following:

(1) A right or benefit established by federal or state law.

(2) Employee rights described in this article.

(3) Employer rights described in this article.

Sec. 4. A collective bargaining contract may be in effect for more than one (1) year.

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1       **Sec. 5. A contract entered into under section 2 of this chapter**  
 2       **must contain a grievance resolution procedure that applies to all**  
 3       **employees in the bargaining unit. This procedure must provide for**  
 4       **the final and binding arbitration of disputes concerning the**  
 5       **administration or interpretation of the contract. The arbitration**  
 6       **provisions of the contract are subject to IC 34-57-1.**

7       **Sec. 6. Collective bargaining must begin by May 1 of a year in**  
 8       **which a collective bargaining agreement is to expire. The parties**  
 9       **shall inform the board of the results of collective bargaining.**

10       **Sec. 7. If the exclusive representative and the employer have not**  
 11       **agreed on a contract forty-five (45) days after collective bargaining**  
 12       **begins under section 6 of this chapter, either party may:**

13               **(1) notify the board of the inability to reach an agreement;**  
 14               **and**

15               **(2) ask the board for mediation to begin.**

16       **Sec. 8. The board shall make a mediator available to the parties**  
 17       **at the board's expense within seven (7) days after the board is**  
 18       **notified under section 7 of this chapter.**

19       **Sec. 9. The mediator provided under section 8 of this chapter**  
 20       **shall communicate with both the employer and the exclusive**  
 21       **representative and aid the employer and exclusive representative**  
 22       **in making a settlement so that the parties may enter into a**  
 23       **contract.**

24       **Sec. 10. If a dispute has not been resolved, twenty-one (21) days**  
 25       **after either party makes a request for mediation under section 7 of**  
 26       **this chapter the employer or exclusive representative shall submit**  
 27       **a written request for arbitration to the board.**

28       **Sec. 11. Not later than ten (10) days after a request for**  
 29       **arbitration must be filed under section 10 of this chapter, the**  
 30       **employer and the exclusive representative shall each select a**  
 31       **member to a panel of arbitration. The employer and exclusive**  
 32       **representative shall advise each other and the board of the**  
 33       **selections.**

34       **Sec. 12. Not later than seven (7) days after the request of either**  
 35       **party for arbitration is submitted to the board under section 10 of**  
 36       **this chapter, the board shall select from the permanent staff of fact**  
 37       **finders or panel of part time fact finders established under**  
 38       **IC 20-7.5-1-13 five (5) persons as nominees to serve as impartial**  
 39       **arbitrators on the arbitration panel. Not later than five (5) days**  
 40       **after the selection, the parties shall each alternately strike the**  
 41       **names of two (2) of the nominees, with the first person to request**  
 42       **arbitration under section 10 of this chapter striking first.**

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1       **Sec. 13.** The member remaining after the striking process under  
 2       section 12 of this chapter and the members selected by the  
 3       employer and the exclusive representative constitute the panel. The  
 4       panel member not struck under section 12 of this chapter is the  
 5       chairperson of the arbitration panel.

6       **Sec. 14.** The chairperson of the arbitration panel shall schedule  
 7       a hearing to begin not later than fifteen (15) days after the panel's  
 8       membership is selected and shall give reasonable notice of the date,  
 9       time, and place of the hearing to the parties. The hearing shall be  
 10      held at a location the board considers appropriate. The  
 11      chairperson shall preside over the hearing and take testimony.

12      **Sec. 15.** Oral or documentary evidence and other data  
 13      considered relevant by the arbitration panel may be received in  
 14      evidence at an arbitration hearing held under this chapter. The  
 15      hearing shall be informal and the rules of evidence do not apply. A  
 16      verbatim record of the hearing must be made. The arbitrator shall  
 17      arrange for the necessary recording service. Transcripts may be  
 18      ordered at the expense of the party ordering the transcripts, but  
 19      the transcripts are not necessary for a decision by the arbitration  
 20      panel.

21      **Sec. 16.** If a member of an arbitration panel assembled under  
 22      this chapter is a public officer or employee, the public officer or  
 23      employee continues on the payroll of the employer without loss of  
 24      pay.

25      **Sec. 17.** A hearing conducted by an arbitration panel under this  
 26      chapter may be adjourned periodically but, unless otherwise  
 27      agreed to by the parties, must be concluded not later than thirty  
 28      (30) days after the date of commencement. Arbitration proceedings  
 29      under this chapter may not be interrupted or terminated by an  
 30      unfair labor practice charge filed by either party at any time.

31      **Sec. 18.** An arbitration panel may do the following:

32          (1) Administer oaths.

33          (2) Require the attendance of witnesses and the production of  
 34          evidence considered material to a just determination of an  
 35          issue in dispute.

36      **Sec. 19.** An arbitration panel may issue a subpoena under  
 37      section 18 of this chapter.

38      **Sec. 20.** If:

39          (1) a person refuses to obey a subpoena or to be sworn or to  
 40          testify; or

41          (2) a witness, a party, or an attorney is guilty of contempt at  
 42          a hearing;

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the arbitration panel may request the circuit or superior court where the hearing is held to issue an order.

Sec. 21. The failure to obey an order issued at the request of an arbitration panel under section 20 of this chapter may be punished by the court as contempt.

Sec. 22. Before an award is made, the chairperson of an arbitration panel may remand the dispute to the parties for further collective bargaining for a period not to exceed two (2) weeks. If the dispute is remanded, the time provisions of this chapter are extended for a period equal to that of the remand. The chairperson of the arbitration panel shall notify the board of a remand under this section.

Sec. 23. Not later than the conclusion of a hearing held under section 14 of this chapter, the arbitration panel shall identify the economic issues in dispute and direct each party to submit to the arbitration panel and to each other, within the time limit the panel prescribes, each party's last offer of settlement on each economic issue. The determination of an arbitration panel is conclusive concerning the identification of issues in dispute and issues that are economic.

Sec. 24. (a) The arbitration panel shall make written findings of fact and adopt a written opinion not later than the end of:

- (1) thirty (30) days after the conclusion of a hearing; or
- (2) any further additional periods to which the parties agree.

(b) The arbitration panel shall mail a copy of the opinion to the parties, the representatives of the parties, and the board.

Sec. 25. (a) As to economic issues, the arbitration panel shall, on an issue by issue basis, adopt the last offer of settlement that, in the opinion of the arbitration panel, more nearly complies with the applicable factors prescribed in section 26 of this chapter.

(b) The findings, opinions, and order as to all other issues must also be based upon the applicable factors prescribed in section 26 of this chapter.

Sec. 26. If there is no agreement between the parties, or if there is an agreement but the parties have begun negotiations or discussions for a new agreement or an amendment of the existing agreement, and wage rates or other conditions of employment under the proposed new or amended agreement are in dispute, the arbitration panel shall base its findings, opinions, and order upon the following factors:

- (1) The lawful authority of the employer.
- (2) Stipulations of the parties.

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(3) The interests and welfare of the public and the financial ability of the employer to meet the costs.

(4) Comparison of the wages, hours, and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours, and conditions of employment of employees performing similar services and with other employees generally in comparable communities.

(5) The average consumer prices for goods and services.

(6) The overall compensation currently received by the employees, including the following:

(A) Direct wage compensation, vacations, holidays, and other excused time.

(B) Insurance, pension, medical, and hospitalization benefits.

(C) The continuity and stability of employment.

(7) Changes in any of the circumstances during the arbitration proceedings.

(8) Other factors normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment through voluntary collective bargaining, mediation, factfinding, or arbitration between parties in public or private employment.

**Sec. 27. If a fiscal year begins:**

(1) after the initiation of arbitration procedures under this chapter; and

(2) before the arbitration decision or enforcement of the decision;

this occurrence does not render a dispute moot or impair the jurisdiction or authority of the arbitration panel or the decision.

**Sec. 28.** Except as provided in section 29 of this chapter, an increase in rates of compensation awarded by an arbitration panel under this chapter is effective at the beginning of the employer's fiscal year beginning on or after the date of the arbitration award.

**Sec. 29.** If a fiscal year begins after the initiation of arbitration procedures, section 28 of this chapter does not apply. However, an increase awarded by an arbitration panel under this chapter may be retroactive to the beginning of the fiscal year.

**Sec. 30.** The parties may, by stipulation, amend or modify an award of arbitration under this chapter.

**Sec. 31.** Upon petition by either the employer or the exclusive representative, an order of an arbitration panel under this chapter may be reviewed by the circuit or superior court in the county in



1 which the dispute arose or in which a majority of the affected  
 2 employees reside. However, the only grounds upon which the  
 3 panel's order may be reviewed are that:

- 4 (1) the arbitration panel was without authority or exceeded
- 5 the panel's authority;
- 6 (2) the order is arbitrary or capricious; or
- 7 (3) the order was procured by fraud, collusion, or unlawful
- 8 means.

9 **Sec. 32.** A petition for review of an order of an arbitration panel  
 10 under section 31 of this chapter must be filed with the circuit court  
 11 not later than ninety (90) days after the issuance of the arbitration  
 12 order. The pendency of the proceeding for review does not  
 13 automatically stay the order of the arbitration panel.

14 **Sec. 33.** If the court, in proceedings on a petition for review of  
 15 an order of an arbitration panel, finds the appeal or petition  
 16 frivolous, the party against whom the final decision of the court is  
 17 adverse shall pay reasonable attorney's fees and costs to the  
 18 successful party.

19 **Sec. 34.** If the court's decision in a proceeding on a petition for  
 20 review of an order of an arbitration panel affirms an award of  
 21 money, the award, if retroactive, bears interest at the rate of twelve  
 22 percent (12%) annually from the effective retroactive date.

23 **Sec. 35.** During the pendency of proceedings before an  
 24 arbitration panel, currently applicable wages, hours, and other  
 25 conditions of employment may not be changed by either party  
 26 without the consent of the other. However, a party may consent to  
 27 a change without prejudice to the party's rights or position under  
 28 IC 36-11-2 or this chapter.

29 **Sec. 36.** An employee covered under IC 36-11-2 and this chapter  
 30 may not withhold services.

31 **Sec. 37.** An employer may not lock out or prevent an employee  
 32 from performing services.

33 **Sec. 38. (a)** All terms decided upon by an arbitration panel  
 34 under this chapter must be included in an agreement to be  
 35 submitted to the employer's legislative body for ratification and:

- 36 (1) adoption by ordinance if the unit is a county or
- 37 municipality; or
- 38 (2) passage of a resolution if the unit is a township.

39 **(b)** The legislative body of the unit shall review each of the terms  
 40 decided by an arbitration panel under this chapter.

41 **Sec. 39.** If the legislative body of a unit does not reject a term of  
 42 an arbitration panel's decision by a vote of at least sixty percent

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(60%) of all the members of the body within twenty (20) days after the issuance of the decision, the term becomes a part of the collective bargaining agreement.

**Sec. 40.** If the legislative body of a unit rejects a term of the arbitration panel's decision, the legislative body must issue written reasons for the rejection of the term to the parties within twenty (20) days after the rejection. Written reasons must be issued under this section for each term that is rejected. The parties shall then return to the arbitration panel within thirty (30) days after the issuance of the reason for rejection for further proceedings and the issuance of a supplemental decision with respect to the rejected terms.

**Sec. 41.** A supplemental decision made under section 40 of this chapter by an arbitration panel or other decisionmaker selected by the parties must be submitted to the legislative body of a unit for ratification in accordance with sections 38 through 40 of this chapter.

**Sec. 42.** The voting requirements of section 39 of this chapter apply to all disputes submitted to arbitration, notwithstanding inconsistent voting requirements that may be contained in a collective bargaining agreement between the parties.

**Sec. 43.** The employer shall pay all reasonable costs of a supplemental proceeding under section 40 of this chapter, including the exclusive representative's reasonable attorney's fees, as established by the board.

**Sec. 44.** The employer and exclusive representative may agree to submit unresolved disputes concerning wages, hours, terms, and conditions of employment to an alternative form of impasse resolution without regard to this chapter.

**Sec. 45.** Except as provided in sections 8 and 43 of this chapter, the cost of procedures under this chapter as determined by the board shall be paid equally by the parties. The board shall establish a complete procedure for the collection and payment of the cost.

**Sec. 46.** After the exhaustion of an arbitration mandated by this chapter or procedures mandated by a collective bargaining agreement, a civil action for the violation of an agreement between an employer and a labor organization representing employees may be brought by either party to the agreement in the circuit or superior court of a county in which:

- (1) the employer transacts business; or
- (2) the employer's principal office is located.

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**Chapter 5. Collective Bargaining for Public Safety Employees:  
Miscellaneous Provisions**

**Sec. 1. This chapter applies to all units.**

**Sec. 2. If this chapter or IC 36-11-2 through IC 36-11-4 conflicts with an Indiana statute, rule, or executive order relating to wages, hours, and conditions of employment and employment relations, this chapter or IC 36-11-2 through IC 36-11-4 prevails.**

**Sec. 3. For purposes of IC 36-1-3-6, this chapter and IC 36-11-2 through IC 36-11-4 provide the exclusive manner for a unit to exercise the power to bargain collectively with the unit's employees.**

**Sec. 4. An employee or exclusive representative may not participate in a strike against an employer.**

**Sec. 5. An employee engaging in a strike is subject to discharge by the employer, as provided for members of police and fire departments of towns and townships in IC 36-8-3-4.**

**Sec. 6. An exclusive representative that engages in or sanctions a strike loses the right to represent the employees for one (1) year after the date of the action.**

**Sec. 7. An employer may not pay an employee for days during which the employee was engaged in a strike.**

**Chapter 6. Other Collective Bargaining Provisions in Title 36.**

**Sec. 1. This chapter contains a list of references to other provisions within IC 36 that concern collective bargaining.**

**Sec. 2. IC 36-8-10-23 prohibits bargaining cost of living adjustments for disabled or retired employee beneficiaries of a sheriff's department when a county's fiscal body has adopted the section.**

**Sec. 3. Collective bargaining for employees of regional transportation authorities and public transportation agency employees affected by the actions of a regional transportation authority is governed by IC 36-9-3-21 through IC 36-9-3-25 and IC 36-9-3-27.**

**Sec. 4. Collective bargaining for employees of urban mass transportation systems and public transportation corporations is governed by IC 36-9-4-37 and IC 36-9-4-41.**

**SECTION 4. [EFFECTIVE JULY 1, 2002] (a) This act does not:**

**(1) apply to or abrogate a contract or an agreement in effect on June 30, 2002; or**

**(2) preclude arbitration on a provision in a contract or agreement referred to in subdivision (1).**

**(b) This SECTION expires July 1, 2005.**

